



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1346

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116097.

The Texas Department of Transportation (the "department") received a request for the maintenance records for IH-10 and Pfeil Road for 1988. The requestor is a detective for the City of San Antonio Police Department asking on behalf of that agency. You claim that the requested information is excepted from disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the representative sample of documents at issue.¹

We first point out that information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well-settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

552.007, which prohibits the selective disclosure of information, or Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.* Thus, you may transfer the requested information to the City of San Antonio Police Department without waiving the department's ability to raise its discretionary exceptions in the future. Since you raise an exception to disclosure, however, we will consider whether it is applicable.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney, and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

You have submitted a notice of claim letter which you state complies with the notice requirements of the TTCA. We conclude that litigation is reasonably anticipated, and that the documents submitted by the department are related to the reasonably anticipated litigation for purposes of section 552.103. Thus, you may withhold the requested information from public disclosure under section 552.103.

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref: ID# 116097

Enclosures: Submitted documents

cc: Det. Teri Neal-McNamara
City of San Antonio Police Department
P.O. Box 839948
San Antonio, Texas 78283
(w/o enclosures)